IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1016 OF 2002

Sadanand Bhikaji Nagwekar ..Petitioner.

Vs.

Shri. D.S. Malvankar & Ors. ..

Respondents.

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Mr. L.M. Acharya for the petitioner.
Mr. S.G. Surana for respondent Nos.1 to 3.
Mr. R.J. Mane, AGP for respondent No.4.
Mr. Shailesh Redekar for respondent No.7.

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CORAM : DR.D.Y.CHANDRACHUD, J.

12th January, 2005.

P.C. :

1. In pursuance of an order dated 4th February, 2002 passed by a Division Bench of this Court, the Slum Rehabilitation Authority has considered the case of the Petitioner for the allotment of alternative accommodation in a Slum Rehabilitation Scheme. The case of the Petitioner has been negatived. Under D.C. R. 33(10) of the Development Control Regulations for Greater Bombay 1991, for the redevelopment of slums whose inhabitants' names and structures appear in the electoral roll with reference to 1st January, 1995 or a date prior thereto, but where the inhabitants stay at

present in the structure, the provisions of Appendix IV should apply for the purposes of providing a tenement in exchange of an independent numbered structure. These conditions of eligibility further stipulate that only the actual occupants of the hutment shall be held eligible and the so called structure owner other than the actual occupant, if any, even if his name is shown in the electoral roll for the structure, shall have no right for the reconstructed tenement against that structure. The question of eligibility has, to be decided taking into consideration the actual occupant of the structure and not the claimant's ownership of the structure.

2. The question, therefore, revolves around the situation as it obtained on 1st January, 1995. The Petitioner claims to have received possession inter alia of a godown and certain other structures situated on Plot No.92, T.P.S. III (Mahim Area), Kotwadi, Sakharam Keer Road, Mumbai 400 016. The case of the Petitioner is that he executed a leave and licence agreement in favour of one Vilayat Diljan Ansari on 1st November, 1991 for carrying on business of polishing jari sarees for and on behalf of merchants located in Dadar and Mahim areas. Admittedly and this is the case of the Petitioner, the first agreement came to be

extended thereafter. The Petitioner relies upon an affidavit of Vilayat Diljan Ansari purportedly dated 29th April, 1997 which states that he had agreed to hand over vacant and peaceful possession of the godown to the Petitioner on expiry of the period of the last agreement on 31st July, 1997. Vilayat Diljan Ansari expired in the year 2001. The Slum Rehabilitation Authority has held that for the purposes of the allotment of an alternative tenement the persons who would be recognized to the entitlement of an allotment would be the widow and two sons of the deceased together with the Seventh Respondent who is his brother.

3. Now the case of the Petitioner is that after the execution of the affidavit on 29th April, 1997, Vilayat Diljan Ansari handed over possession of the premises to him. The affidavit is seriously disputed and according to the Seventh Respondent it is a bogus document. Be that as it may, what is material is that even if the affidavit were to be accepted as an authentic document, as the Petitioner would have the Court believe, that document itself would show that atleast until 29th April, 1997 (in other words much after 1st January, 1995) the Petitioner was never in possession of the premises.

4. Counsel appearing on behalf of the Petitioner fairly concedes that the Petitioner may not have had any case against the deceased Vilayat Diljan Ansari, but his submission is that the Seventh Respondent cannot be recognized for allotment. The Slum Rehabilitation Authority has noted that the name of the Seventh Respondent appeared in the voters list of 1977 as well as of 1995. But that apart, the Petitioner has himself adverted to a declaratory suit which was filed by Vilayat Ansari in the Small Causes Court (R.A.D. Suit No.1259 of 1997) which shows that on all accounts Ansari was in possession much beyond the cut off date of 1st January, 1995. The subsequent withdrawal of the suit is not material for the present controversy, because the question as to entitlement would have to be decided upon the actual occupation of the structure as on 1st January, 1995. The Petitioner has not even a shred of evidence to establish that he was put back into possession by the licensee much less that on 1st January, 1995 he was in possession. The impugned order recognizes the widow, two sons and the brother of the deceased as being entitled to the allotment of residential accommodation. The order is clearly founded on a proper consideration of the material which was

produced by the rival parties. Though the jurisdiction of the Court under Article 226 to reappraise this evidence is limited, I have adverted to all the material above only with a view to consider whether the order of the authority is based on the material on the record. There is no merit in the Petition which is accordingly dismissed.